

REMARKS

Claims 1 through 19 are in the application as filed.

Claims 1-3, 8, 9 and 13-16 stand rejected under 35 U.S.C. 103(a) as unpatentable over Brown and Yamada et al.

Claims 4-7 and 19 stand rejected under 35 U.S.C. 103(a) as unpatentable over Brown and Yamada et al in view of Basso et al.

Claims 10-12 stand rejected under 35 U.S.C. 103(a) as unpatentable over Brown and Yamada et al in view of Shimakawa et al.

Claim 2 is amended to correct for proper antecedent basis.

Claim 3 is amended to correct a typographical error.

Claim 4 is amended to correct antecedent basis.

Claim 1 is being amended to advance prosecution of this application. Claim 1 has been amended to positively recite as steps descriptive material that was in claim 1 as previously presented. The amendment to claim 1 is not being made to limit claim 1 in view of the references cited, but is being made to reformat claim 1 to more clearly point out the invention.

Claim 1 as previously presented provided that the central serving apparatus has access to "medical test measurement software" and "computer program algorithms for processing medical test measurement data".

The Examiner erroneously and improperly in an attempt to meet this claim language utilizes a broad brush approach of stating that Brown teaches a central serving apparatus that "has access to software or script programs". However that broad brush fails to meet the specific claim language as previously presented. The scripts that are referred to in Brown are actual scripts of questions to be presented to a patient to determine how the patient perceives how he or she is feeling or doing. A script is not the same as or comparable to medical test measurement software or computer program algorithms.

In addition, claim 1 as currently amended states, inter alia: "utilizing said central serving apparatus to access medical test measurement software; utilizing said central serving apparatus to access one or more computer program algorithms for processing medical test measurement data".

At no place does Brown teach or suggest that its central server has access to medical test measurement software or one or more computer program algorithms for processing medical test measurement data as called for in claim 1.

In addition, claim 1 further recites, inter alia: “utilizing said downloaded medical test measurement software at said patient Internet device to provide sensor placement information to a patient; utilizing said medical test software at said patient Internet device to provide diagnostic testing operation and operability of said sensors”

At no place does Brown show, teach or suggest any providing of sensor placement information as called for in claim 1. At no place does Brown show, teach or suggest utilizing medical test software at the patient Internet device to provide testing operation and operability of the sensors as called for in claim 1.

Still further, claim 1 recites, inter alia: “obtaining medical test measurement data via said sensors; uploading said medical test measurement data to said central server from remote locations via said patient Internet apparatus via the Internet”

Brown is absolutely silent on obtaining test measurement data from sensors and uploading test measurement data to a central server as called for in claim 1.

Yet further, claim 1 recites, inter alia: “selecting one computer program algorithm from said at least one or more computer program algorithms at said central serving apparatus; utilizing said one computer program algorithm at said central serving apparatus to process said medical test measurement data; processing said medical test measurement data in accordance with said one computer program algorithm to produce test information from said medical test measurement data”.

Brown is silent on selecting any computer program algorithm at the central server. Brown is silent on utilizing any computer program algorithms at the central server to process medical test measurement data. Brown is further silent on processing any medical test measurement data for any purpose or in any manner and is absolutely silent on producing test information from test measurement data.

In short, the Examiner’s reliance on Brown is misplaced. Brown is directed to an entirely different type of system in which a script of questions is provided to a patient and the responses to the scripted questions is utilized.

The Examiner notes some deficiencies in the teachings of Brown and attempts to fill those voids with the teachings of Yamada et al. The Examiner justifies the selection of Yamada et al on the basis that “Since Brown and Yamada et al are both within the art of processing medical test data received from sensors over a network, it would have been obvious to one of ordinary skill in the art, at the time of the invention to modify Brown, so that a user is able to select an algorithm for processing data, as taught as Yamada et al...”

It is respectfully submitted that the basis for the Examiner’s selection of Yamada et al to fill gaps in the teachings of Brown is the use of hindsight after reading the instant application. Hindsight is as the Examiner should know a prohibited exercise in the selection of combinations of references. Brown and Yamada et al are in different International and US classifications. Brown

does not process medical test data received from sensors over a network. Even if Brown did so, Yamada et al is a completely unrelated teaching. Yamada et al is directed to a "picture archiving communication system for storing, transferring various digital image data..." (first sentence of Abstract). This is clearly evident from FIG. 1 of Yamada which illustrates that all of the Modalities 10 are image generating devices, not medical sensors. At no place does Yamada process medical test data received from sensors. Rather Yamada stores image data. It is therefore respectfully submitted that one skilled in the art would not be lead to combine the teachings of Yamada and Brown in the manner the Examiner has suggested.

The Examiner ignores that Brown and Yamada et al are directed to different and incompatible systems. The Examiner must take each reference for what it fairly teaches within its four corners, and cannot pick and chose only those portions of references in order to cobble together an arrangement that teaches the claimed invention. The Examiner unfairly ignores the totality of the teachings of the references.

In view of the foregoing, claim 1 is not shown, taught or made obvious by Brown and Yamada et al taken singly or in combination.

Each of the claims 2 through 19 depend from claim 1 and for the same reasons that claim 1 is not shown, taught or made obvious by Brown and Yamada et al, claims 2 through 19 are likewise not shown, taught or made obvious by Brown and Yamada et al taken singly or in combination.

In addition, Claim 2 recites "providing a data base accessible by said central serving apparatus; and storing said test information in said database." The Examiner states that "Brown teaches providing a database accessible by the server and storing information in the database"

However, claim 1 recites: "processing said medical test measurement data in accordance with said one computer program algorithm to produce test information." Neither Brown nor Yamada shows, teaches or suggests processing medical test measurement data in accordance with any algorithm to produce test information. Accordingly since neither Brown nor Yamada taken singly or in combination show, teach or suggest so producing test information, they can not show, teach or suggest storing test information in a database. For this additional reason claim 2 is not shown, taught or made obvious by Brown and Yamada et al.

Claim 3 recites, inter alia: "associating said stored test information with said patient identification information." As explained with respect to claim 2, since neither Brown nor Yamada taken singly or in combination show, teach or suggest so producing test information, they can not show, teach or suggest storing test information in a database. For this additional reason claim 3 is not shown, taught or made obvious by Brown and Yamada et al.

Claims 4 recites, inter alia: "receiving a request for said test information from a requester; and determining that said requester has authorization to obtain said test information." The Examiner recognizes that neither Brown nor Yamada teaches receiving requests and determining authorization and turns to Basso for such teaching. However, since neither Brown nor Yamada

taken singly or in combination show, teach or suggest producing test information, they can not show, teach or suggest receiving a request for such test information. Basso does not show producing such test information either. For this additional reason claim 4 is not shown, taught or made obvious by Brown, Yamada et al and Basso taken singly or in combination.

Claims 5 and 6 depend from claim 4 and for the additional reason that claim 4 is not shown, taught or made obvious by Brown, Yamada and Basso taken singly or in combination, claims 5 and 6 are not shown, taught or made obvious by the references.

Claims 7 and 19 each depends from claim 3 and includes similar language to claim 4 relative to test information. For the same reason that claim 4 is not shown, taught or made obvious by the references taken singly or in combination, claims 7 and 19 are not shown, taught or made obvious by the references.

Claim 10 recites; "downloading automatic un-install software with said test measurement software, said automatic un-install software being automatically operable to un-install said test measurement software upon successful uploading of said test measurement data to said central serving apparatus." The Examiner points to Shimakawa for software management system in which a client computer automatically uninstalls software after it has been used.

The undersigned has carefully examined Shimakawa and has not found any teaching that an uninstall program is downloaded to a client computer. Rather "uninstall 109" "is a processing portion for changing the registration contents of the history management table 110..." (col. 7, lines 1-5). In other words, the "uninstall" merely tracks the registration number of software that a client has uninstalled, without any indication that such uninstall is done automatically. **Nothing in Shimakawa show, teaches or suggests downloading uninstall software.** It is respectfully submitted that the Examiner has misread Shimakawa.

In addition. nothing in Shimakawa shows, teaches or suggests automatically uninstalling test measurement software. Nothing in Shimakawa shows, teaches or suggests automatic un-installing test measurement software upon successful uploading of test measurement data.

For this additional reason claim 10 is not shown, taught or made obvious by the references taken singly or in combination.

Claim 11 depends from claim 10 and for the same additional reason that claim 10 is not shown, taught or made obvious by the references taken singly or in combination, claim 11 is not shown, taught or made obvious.

Claim 12 depends from claim 8 and includes language similar to that of claim 10. For the same additional reason that claim 10 is not shown, taught or made obvious by the references, claim 12 is likewise not shown, taught or made obvious.

Accordingly, none of the claims in the application are shown, taught or made obvious by any of the references of record taken singly or in any combination.

INVENTOR: McBride et al

attorney docket: CARDIOBEAT-2

TITLE: MEDICAL TESTING INTERNET SERVER SYSTEM AND METHOD

In view of the foregoing amendment and comments, it is believed that all the claims presently in the application are in condition for allowance. Reexamination and reconsideration are requested. It is further requested that the claims be allowed and that this application be passed to issue. An early notice of allowance would be appreciated.

Respectfully submitted,
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